

**OPINION
49-132**

December 2, 1949 (OPINION)

MOTOR VEHICLES

RE: Liability of Drivers Operating Government Vehicles

The question of whether or not operators of government-owned vehicles involved in an accident must comply with the provisions of the Financial Responsibility Act, chapter 39-16, 1947 Supplement of the North Dakota Revised Code of 1943, has been under discussion on numerous occasions, and several opinions have been written concerning it.

The matter has been up principally to vehicles under the control of Colonel J.S. Seybold, Corps of Engineers, Fort Lincoln, North Dakota, and several conferences have been held on the matter. The matter on which you appeared in Bismarck on November 7, is identical with the situation confronting Colonel Seybold in that the vehicle involved at the time of the accident was a government-owned vehicle.

It is obvious from the Act itself that all the situations arising from the present large number of government vehicles being operated, would not be considered when the Act was drawn. In this regard, I have particular reference to the case of Keim v. United States, 177 US 290, and the Federal Tort Claims Act, 28 USCA 921.

Section 31 of the Financial Responsibility Act provides:

"This chapter does not apply with respect to any motor vehicle owned or operated by the United States, this state, or any other political subdivision of this state, or any municipality therein."

In an opinion by the Attorney General's Office, under date of April 21, 1948, it was stated:

"In enacting section 31 of said chapter 256 of the 1947 Session Laws, the Legislature undoubtedly recognized that the state has no power to impose conditions upon the Federal Government which would in any way impede or interfere with any activity which is a part of a strictly Federal Government project. However, I do not believe that it was the intention of the Legislature to exempt the driver of a government-owned vehicle from liability for property damage or physical injury resulting from the negligent operation of such vehicle. The exemption applies only to the vehicles owned and operated by the federal government, this state, and its municipalities."

Section 39-1632 of the 1947 Supplement recognizes that in certain instances, insurance is not necessary in order to protect an individual who might be injured as a result of a highway accident. This section sets forth who may be a self-insurer. It was obviously the intent of the Legislature, in enacting the Financial Responsibility Act, to make it exactly what the title implies. Prior

to the adoption of the Federal Tort Claims Act, a person injured as the result of the negligence of the operator of a government-owned vehicle was not adequately protected.

However, the adoption of the Federal Tort Claims Act has provided, to the driver and operator of a government car, such financial responsibility. In fact, it places the driver in a position so that he is possessed of ability to pay any judgment obtained against him as a result of his negligent operation of his vehicle.

It is therefore the opinion of this office that the government, in view of the Tort Claims Act, is possessed with the qualifications to become a self-insurer under the Financial Responsibility Act.

We wish to call the attention of the United States Attorney to the fact that many federal employees owning private vehicles, have afforded themselves the additional protection while operating government cars, which is given by a broad form coverage under the policy which they carry on their own privately owned vehicle. These individuals, in doing that, have recognized their obligation to anyone whom they might injure as a result of their own negligence, and should be commended for their actions.

Under the laws of the state of North Dakota, there are certain criminal offenses which will result in the suspension or revocation of the driver's license. While we recognize that under the decisions of the United States Supreme Court, in the case of Johnson v. Maryland, 254 US 51, and Keim v. United States, 177 US 290, the government itself is the sole judge of the qualifications of their drivers, the driver and operator of a government vehicle will necessarily lose his state license in spite of the fact that the government is recognized as a self-insurer under other conditions. This would result in the driver involved in a criminal offense, wherein his license was suspended or revoked, in not being able to operate his privately owned vehicle during the suspension or revocation.

We also feel that we should have the cooperation of all federal departments in making out the necessary accident reports required by our state law.

We also wish to call the attention of the United States Attorney to the Unsatisfied Judgment Law, Chapter 39-17 of the 1947 Supplement of the North Dakota Revised Code of 1943. In event a situation should arise wherein judgment is obtained against an individual through the negligent operation of a government vehicle, and it is paid by the state under the Unsatisfied Judgment Fund, the license of the driver would also be revoked so far as the operation of his privately owned vehicle was concerned, until the Act had been complied with.

WALLACE E. WARNER

Attorney General